

REMARKS**1. The Amendments and the Support Therefor**

No claims have been canceled, no new claims have been added, and claims 1 and 16 have been amended to leave claims 1-6, 8-11, 15-18, and 20-25 in the application. No new matter has been added by the amendments, which are discussed in greater detail below

2. Sections 1-2 of the Office Action: Rejection of Claims 1-3, 8, 15-18, and 21-22 under 35 USC §102 in view of U.S. Patent 4,439,643 to Schweizer

Before reviewing these rejections in detail, it is first important to clarify the structure of the *Schweizer* speaker enclosure. A good understanding of the *Schweizer* speaker enclosure can be understood with review of Figs. 1-4 (presenting an exploded view), Figs. 6 and 7 (showing a cutaway view), and Figs. 11 and 12 (showing a cross-sectional view of the mounted speaker on the ceiling, noting that Fig. 12 uses the modified form of the mounting plate 2 shown in Fig. 8). Referring back to Figs. 1-4, the enclosure has a speaker 3; a base plate 1 with base plate rings 5'; a mounting plate 2 bounded by a square plate 2' and having mounting plate rings 5; and a front plate 1' with a grill 4. While not shown in Fig. 4, the front plate 1' includes mounting rings 5' as well (as seen in Figs. 6-7 and 12). The speaker is joined to the front plate 1' by clips 8 which extend from the mounting rings 5' of the front plate 1' to engage the rim 9 of the speaker 3 (see Fig. 6, note column 2 lines 21-23).

In essence, the mounting plate 2 serves as a central mounting structure for the front plate 1' and opposing base plate 1, with the perimeter of the front plate 1' and/or base plate 1 abutting the square plate 2' of the mounting plate 2 (see particularly Figs. 6-7 and 12). In particular, note from Figs. 6-7 that the front plate 1' is *not* crimped about the base plate 1. The mounting plate 2 is joined to the front plate 1' and/or base plate 1 by having the mounting plate rings 5 telescopically join the mounting rings 5' on the front plate 1' and/or base plate 1 (see Figs. 6-7 and 12). As noted in the Abstract:

[T]he mounting plate is a plural center ring which receives telescoping cover plates from both sides to form a clamshell enclosure. Where flush mounting is used, such as on walls or ceilings, a single telescoping ring is used, which is mounted in the wall or ceiling, and the grill work and the complementary telescoping ring is attached thereto.

By using the mounting plate 2 as the structure to which the front plate 1' and base plate 1 are mounted, a *Schweizer* speaker enclosure may be mounted to a ceiling or to walls with or without the base plate 1, as shown in Figs. 13-16.

Independent claim 1 has been amended to clarify that the grill is perforated across the area bounded by the peripheral edge of the backbox (i.e., across the entirety of the exposed face of the grill, see FIGS. 2A/2B and page 5 line 17 onward), with the speaker resting on the interior surface of the grill, and with sound-baffle sheets extending from the speaker to the peripheral edge of the backbox (see FIG. 4). As noted in the Applicant's specification, the claimed arrangement provides a speaker enclosure which fits into a ceiling (or other surface) in place of a ceiling (or other) tile, without occupying significantly more space than an ordinary tile, and with the perforations and sound-baffle sheets helping to present a front/exposed surface with a regular/uniform appearance which does not unduly stand out with respect to the surrounding tiles. The perforations and sound-baffle sheets also help to provide superior sound quality and an inexpensive construction which is easily manufactured, installed, and maintained.

The *Schweizer* enclosure does not describe or suggest the claimed arrangement, since the grill perforations of *Schweizer* do not extend across the entirety of the area bounded by the peripheral edge of the backbox (see Fig. 5 of *Schweizer*), and the sound-baffle sheet of *Schweizer* is not situated upon the interior surface of the grill (see Figs. 6-7 of *Schweizer*). Further, note from Figs. 6-7 of *Schweizer* that the speaker is enclosed/surrounded by the mounting plate rings 5. Looking to *Schweizer* and the other references of record, it cannot be fairly said that there is any apparent benefit to extending the perforations of the grill from the boundaries of the speaker to the boundaries of the peripheral edge of the backbox, since such perforations would serve no apparent purpose. Nor is there any need to have sound-baffle sheets extend across the interior surface of the grill from the boundaries of the speaker to the boundaries of the peripheral edge of

the backbox, particularly since (1) *Schweizer*'s grill is not perforated across this area and thus there is no need to extend sound-baffle sheets across this area, and (2) this area is also outside the "can" provided by the mounting plate rings 5, which surrounds and encloses the speaker, and this "can" isolates the speaker's output to the perforated area such that no sound-baffle sheets are needed. Since the claimed arrangement is not shown in *Schweizer*, nor can it fairly be said that any art of record would suggest modification of *Schweizer* to meet the claimed arrangement, claim 1 (and thus its dependent claims 2-6, 22, and 23) are submitted to be novel and unobvious, and thus allowable.

Regarding *dependent claims 2 and 3*, please note the comments regarding claims 8 and 15 below.

Independent claim 8 recites that the grill has a crimping edge crimped about the peripheral edge of the backbox, a feature which is not present in *Schweizer*, wherein the grill/front plate 1' is *not* crimped about the backbox/base plate 1 (again, note Figs. 6 and 7 of *Schweizer*, wherein the perimeters of the grill/front plate 1' and the backbox/base plate 1 are shown situated adjacent the sound baffle sheet/square plate 2'). Further, there is no suggestion in *Schweizer*, nor in any other record of art, to crimp *Schweizer*'s grill/front plate 1' about the backbox/base plate 1, and in fact there can be no such suggestion: *Schweizer*'s express purpose is to use the mounting plate 2 as an intermediate mounting structure for the grill/front plate 1' and the backbox/base plate 1 so that the grill/front plate 1' may be used either with or without the backbox/base plate 1. Such a purpose cannot be fulfilled if the grill/front plate 1' and the backbox/base plate 1 are crimped together as claimed. In other words, if the *Schweizer* enclosure was modified to meet claim 8, it would no longer function for its intended purposes, and thus such a modification would not be contemplated by the ordinary artisan (see MPEP 2143.01, "THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE"). Claim 8 and its dependent claims 9-11 and 24 are therefore submitted to be novel and unobvious, and thus allowable.

Independent claim 15 also recites that the grill is crimped about the peripheral edge of the backbox, a feature which (as discussed above with respect to claim 8) is neither shown in nor suggested by *Schweizer*. Thus, independent claim 15 and its dependent claims 16-18, 20, 21, and 25 are submitted to be allowable.

Regarding *dependent claim 16*, please note the comments regarding claim 1 above: a sound-baffle sheet resting on the grill is neither shown nor suggested by *Schweizer*.

Regarding *dependent claim 17*, it is simply not seen where *Schweizer* discloses the claimed arrangement. "The factual determination of anticipation requires the disclosure in a single reference of every element of the claimed invention. . . . It is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 USPQ2d 1461, 1462 (Bd. Pat. App. & Int. 1990), *citing to Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984); see also 37 CFR §1.104(c)(2),¹ MPEP 707.07(d).

Regarding *dependent claim 21*, note the comments regarding claims 8 and 15 above: *Schweizer* neither shows nor suggests the claimed arrangement.

3. Section 3 of the Office Action: Rejection of Claims 4-6, 9-11, 20 and 23-25 under 35 USC §103(a) in view of U.S. Patent 4,439,643 to Schweizer

Regarding *dependent claims 4-6, 9 and 10*, these are submitted to be allowable for at least the same reasons that their independent claims are allowable. Further, it is submitted that there is in fact no true motivation to modify *Schweizer* to meet the claimed arrangement: note that the structure of the *Schweizer* enclosure is complex, and is intended for direct attachment to ceilings (see Fig. 12). With the complexity of structure, it is unclear how *Schweizer* could be molded or

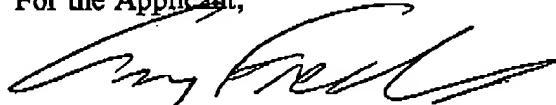
¹ "In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified."

fiberglass or mineral fiber as claimed. Further, these materials are rather brittle, and *Schweizer* relies on resiliently flexible clips (shown at 8 in Fig. 6) for fastening. If these clips were molded of fiberglass or mineral fiber, question whether they would bend and then snap into place (as *Schweizer*'s metal clips are intended to do), or whether the clips would simply snap off. Further, *Schweizer* is attached to a ceiling via fasteners, and thus light weight of the speaker enclosure is not necessary. Since there is in fact no true and objectively ascertainable motivation to form *Schweizer* of molded fiberglass or mineral fiber – it appears such an arrangement would be very difficult to accomplish, and would not lead to an operable enclosure – these claims are submitted to be unobvious and allowable.

4. In Closing

If any questions regarding the application arise, please contact the undersigned attorney. Telephone calls related to this application are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

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